

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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July 1, 2002

Lou Nunez
Foundation For Fair Contracting
3807 Pasadena Avenue, Suite 150
Sacramento, CA 95821

Re: Public Works Case No. 2001-060
2001-2002 Levee Maintenance Project
Natali Levee Rehabilitation Project
San Joaquin County Reclamation District No. 684

Dear Mr. Nunez:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the work performed by Holt Repair and Manufacturing, Inc. ("Contractor") on the Natali Levee Rehabilitation Project ("Project") under contract with San Joaquin County Reclamation District No. 684 ("District") is a public work subject to the payment of prevailing wages.

In April 2001, District entered into an agreement ("Agreement") with Contractor for the furnishing and placement of approximately 14,000 tons of earth fill material and class 2 aggregate base rock along the Natali Levee for its rehabilitation. The earth fill material is to be placed and compacted along the surface of the levee crest road to a certain finished elevation. The aggregate base rock is to be placed and compacted on top of the earth fill. District agreed to pay Contractor a total of \$61,402 for the work and material required to perform the job.

What is now Labor Code¹ section 1720(a)(1) generally defines "public work" to mean: "Construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds"

What is now section 1720(a)(2) defines "public work" as work done for reclamation districts. Excluded from coverage under this section is the operation of irrigation or drainage systems of irrigation or reclamation districts.

¹ Unless otherwise indicated, all subsequent statutory references are to the Labor Code.

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Section 1771 requires the payment of prevailing wages for maintenance work. Title 8, California Code of Regulations defines "maintenance" as including "...routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired"

The Project constitutes work done for a reclamation district, and does not fall within any exception in this section.² It is therefore a public work under section 1720(a)(2).

Independent of section 1720(a)(2), the Project constitutes a public work under section 1720(a)(1). The work was performed under contract between Contractor and District and paid for with District funds, which are public. It is repair work. District's Contract Documents seeking bids for the Project describe the work as the "Natali Levee Rehabilitation." The work is also alteration because the land surface of the levee is being altered. *Priest v. Housing Authority* (1969) 275 Cal.App.2d 751, 756.

Finally, the Project constitutes maintenance under section 1771. The work performed is routine, recurring and usual work for the preservation, protection and keeping of the public owned and operated levee structure so that it may continue to serve the intended purpose of holding water and preventing flooding. Again, the Contract Documents for the Project indicate that it is part of a larger undertaking entitled, "2001-2002 Levee Maintenance Project."

² District cites a San Joaquin County Superior Court Statement of Decision dated March 13, 1990 in *Dutra Construction v. DIR, et al.*, in support of its view that the Project falls within the exceptions to section 1720(a)(2), presumably as operation of a drainage system. This Superior Court Decision is not binding on this Department for, among other reasons, it does not pertain to this case and controversy. In addition the Decision, which is a transcript of a court hearing, does not contain sufficient facts about the project in that case to allow for a comparison, and the Court's substantive ruling is far from clear. To the extent the bases of the Court's Decision are understandable, they would appear to support the view that the Project here is a public work under section 1720(a)(2).

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For the above reasons, the Project is a public work for which prevailing wages must be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script, reading "Stephen J. Smith". The signature is written in dark ink and is positioned above the printed name and title.

Stephen J. Smith
Director